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89TH CONGRESS, 1st Session } SENATE { REPORT No. 462

PROFESSIONAL SPORTS ACT OF 1965

JULY 16, 1965.—Ordered to be printed

Mr. HART, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 950]

The Committee on the Judiciary, to which was referred the bill (S. 950) to make the antitrust laws and the Federal Trade Commission Act applicable to the organized professional team sports of baseball, football, basketball, and hockey and to limit the applicability of such laws so as to exempt certain aspects of the organized professional team sports of baseball, football, basketball, and hockey, and for other purposes, having considered the same, reports favorably thereon, with amendments, and recommends that the bill as amended do pass.

AMENDMENTS

Amendment No. 1: On page 1, line 3, immediately after the word "That," insert the subsection designation "(a)" and the following: "except as otherwise provided by subsection (b),".

Amendment No. 2: On page 2, between lines 16 and 17, insert the following new subsection:

> (b) The exemption conferred by subsection (a) shall not apply to any agreement, plan or arrangement under which any club administering a professional sport team may have an exclusive or preferred right to negotiate for the services of any college student if such agreement, plan, or arrangement would permit such club to enter into a professional athletic contract with any student who has matriculated, at a 4-year college granting degrees, before the earlier of the following dates: (1) the date of the conclusion of the fourth academic year following his matriculation, or (2) the date of the conclusion, during the fourth academic year following his matriculation, at the college at which he first matriculated, of the scheduled intercollegiate season of the professional sport to which he has been signed.

Amendment No. 3. On page 3, beginning on line 9, strike the following: "Nothing in this act shall be deemed to amend or otherwise affect the act of September 30, 1961 (75 Stat. 732)" and insert in lieu thereof the following:

> Section 3 of the act of September 30, 1961 (75 Stat. 732) is amended to read as follows:
>
> "SEC. 3. Section 1 of this act shall not apply to any joint agreement described in section 1 of this act which permits the telecasting of all or a substantial part of any professional football game on any Friday after 6 o'clock post meridian or on any Saturday during the period beginning on the second Friday in September and ending on the second Saturday in December in any year from any telecasting station located within 75 miles of the game site of any intercollegiate or interscholastic football contest scheduled to be played on such a date if—
>
> "(1) such intercollegiate football contest is between institutions of higher learning both of which confer degrees upon students following completion of sufficient credit hours to equal a 4-year course, or
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> "(2) in the case of an interscholastic football contest, such contest is between secondary schools both of which are accredited or certified under the laws of the State of States in which they are situated and offer courses continuing through the 12th grade of the standard school curriculum, or the equivalent, and
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> "(3) such intercollegiate or interscholastic football contest and such game site were announced through publication in a daily newspaper of general circulation prior to March 1 of such year as being regularly scheduled for such day and place."

PURPOSE OF AMENDMENTS

The purpose of the first two amendments is to make the exemption from the antitrust laws inapplicable in any situation where a college athlete is signed by any professional baseball, football, basketball, or hockey club pursuant to a league draft before the earlier of the following dates: (1) the date of the conclusion of the fourth academic year following his matriculation, or (2) the date of the conclusion, during the fourth academic year following his matriculation, at the college at which he first matriculated, of the scheduled intercollegiate season of the professional sport to which he has been signed.

The purpose of the third amendment is to grant to high schools the same protection from the telecasting of professional football games granted to colleges by the act of September 30, 1961 (75 Stat. 732). That act prevented professional football games from being telecast from a telecasting station located within 75-miles of the game site of any intercollegiate football contest.

PURPOSE

The purpose of the proposed legislation, as amended, is to place the organized professional team sports of baseball, football, basketball, and

hockey on an equal antitrust footing and then to grant exemptions relating to the essential sports practices as opposed to the business practices of the sports involved.

The bill does this first by placing baseball and the other professional team sports firmly within the purview of the antitrust laws. The bill then proceeds to define with particularity those areas where exemptions are necessary to allow team sports to operate effectively within leagues; to take actions aimed at balancing playing strength and to preserve the integrity of the sports.

SECTIONAL ANALYSIS

Section 1 contains the essence of the proposed legislation. It declares that the designated organized professional team sports are within the purview of the antitrust laws. It then provides that such laws shall not apply to any contract, agreement, rule, course of conduct, or other activity by, between, or among persons conducting, engaging, or participating in the designated organized professional team sports to the extent to which any of the above relate to—

(1) the equalization of competitive playing strengths;

(2) the employment, selection, or eligibility of players, or the reservation, selection, or assignment of player contracts;

(3) the right to operate within specific geographic areas; or

(4) the preservation of public confidence in the honesty in sports contests.

Provided that the exemptions granted shall not apply to any agreement, plan or arrangement giving a member team in the professional team sports of baseball, football, basketball, or hockey an exclusive or preferred right to negotiate for the services of a college student if such agreement, plan, or arrangement would permit such member team to enter into a contract with such college student before the earlier of the following dates: (1) the date of the conclusion of the fourth academic year following his matriculation, or (2) the date of the conclusion, during the fourth academic year following his matriculation, at the college at which he first matriculated, of the scheduled intercollegiate season of the professional sport to which he has been signed.

Section 2 defines the term "persons" as used in the proposed legislation.

Section 3 is the saving clause, providing that causes of action commenced prior to the effective date of the proposed legislation shall not be affected.

Section 4 provides that nothing in the proposed legislation is to be construed as depriving players in the designated organized professional team sports from the right to bargain collectively, or to engage in other activities for their mutual aid or protection.

Section 5 provides that the exemptions from the antitrust laws are limited solely to the specific activities set forth in section 1.

Section 6 amends the act of September 30, 1961 (75 Stat. 732). That act permits member clubs in the same organized professional team sport to pool their separate television rights for sale as a unit by a league. The act further provides that professional football games cannot be telecast from a telecasting station located within 75 miles of the game site of an intercollegiate football game on any Friday after 6 o'clock post meridian or on any Saturday from the second

Friday in September to the second Saturday in December in any year. The proposed legislation grants the same protection from the telecasting of professional football games to high school game sites.

JUDICIAL AND LEGISLATIVE HISTORY

The necessity for the proposed legislation arises from several decisions of the Supreme Court concerning the applicability of the antitrust laws to organized professional team sports. The decisions have resulted in inequities in the application of the antitrust laws to the various team sports and have subjected league operations to the possible threat of prosecution and litigation.

In response to the statement by the Court that the remedy for the problems arising from the various decisions must be by legislation, many bills have been introduced in the Congress. These measures produced voluminous records of testimony, numerous discussions in subcommittees and committees, and debates in the Senate and in the House. A full understanding of the need and the evolution of this legislation requires a knowledge of its judicial and legislative background.

The courts

In 1922 the Supreme Court ruled that organized baseball was not subject to the antitrust laws. *Federal Baseball Club of Baltimore* v. *National League of Professional Baseball Clubs* (259 U.S. 200). The Court found that the "business" of baseball was not "trade or commerce in the commonly accepted use of those words." In baseball, the Court reasoned, the interstate aspects were only incidental. Justice Holmes, writing for the Court, said "personal effort, not related to production, is not a subject of commerce." The Court was later to change this concept of interstate commerce, but not as applied to baseball.

In the *Federal Baseball* case the Court had under review a decision of a court of appeals overruling a judgment of the trial court which awarded treble damages amounting to $240,000 to the plaintiff (269 Fed. 681 (D.C. Cir., 1920)).

The complaint alleged that the provision in the contracts of the players with the member teams of the leagues in organized baseball forbade them to contract with another club and prevented the Baltimore enterprise from acquiring their services. This provision is called the "reserve clause." The court of appeals discussed the purpose of the reserve clause and its effects upon the plaintiff. It found that the reserve clause was necessary to preserve competition among the teams on the playing field and that the defendants had done no more than that in this case. The Court concluded that the interstate movement of the Baltimore club had not been affected by the use of the reserve clause and that any effect it might have had was incidental.

Some 30 years later the Supreme Court upheld its ruling in *Federal Baseball* when deciding *Toolson* v. *New York Yankees, Inc.* (346 U.S. 356 (1953)). In reaffirming its decision the Court stated:

> Congress has had the [*Federal Baseball*] ruling under consideration but has not seen fit to bring such business under these [antitrust] laws by legislation * * *.

The Court continued:

> Without reexamination of the underlying issues, the judgments below are affirmed on the basis of *Federal Baseball* * * * so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the Federal antitrust laws.

Prior to the decision in *Toolson* several cases had been brought by baseball players against "organized baseball" alleging that practices such as the reserve clause were in violation of the antitrust laws. Two of the cases were brought in 1948 by players who had violated the reserve clause. Both went to the U.S. Court of Appeals for the Second Circuit which held that baseball was subject to the antitrust laws and remanded the cases for trial. *Gardella* v. *Chandler* (172 F. 2d 402), *Martin et al.* v. *National League Baseball Club* (174 F. 2d 917). Both cases were settled before being tried.

When the Department of Justice brought charges of monopolization against boxing and theatrical enterprises, the defendants relied on the doctrine in *Toolson* and *Federal Baseball* that personal effort unrelated to production was not in commerce. *United States* v. *International Boxing Club* (348 U.S. 236 (1955)); *United States* v. *Shubert* (348 U.S. 222 (1955)).

In *Shubert*, the Court rejected the argument that under its decision in *Toolson* "business built around the performance of local exhibitions are exempt" from the antitrust laws. The Court said that in *Toolson* it was confronted with the same issue as was present in *Federal Baseball*, that the status of baseball under the antitrust laws and the "reserve clause" had been fixed for more than 30 years, and that baseball had grown and developed in this period relying on the early decision. Further, the Court said:

> * * * Congress, although it had actively considered the ruling, had not seen fit to reject it by amendatory legislation * * *. In short, *Toolson* was a narrow application of the rule of *stare decisis*.

The Court then added:

> If the *Toolson* holding is to be expanded—or contracted—the appropriate remedy lies with Congress.

On the same day that the Supreme Court acted upon *Shubert* it decided *International Boxing*, *supra*, and rejected the argument that sports in general were exempt from the antitrust laws by the decisions in *Federal Baseball* and *Toolson*.

In distinguishing *International Boxing* from *Toolson*, the Court went on to say that when the complaint was filed "no court had ever held that the boxing business was not subject to the antitrust laws." And further:

> The issue confronting us is, therefore, not whether a previously granted exemption should continue, but whether an exemption should be granted in the first instance. And that issue is for Congress to resolve, not this Court.

In 1957, the Supreme Court was again to limit the scope of its decisions in *Federal Baseball* and *Toolson*. In deciding *Radovich* v.

National Football League (352 U.S. 445), the Court ruled that professional football was subject to the antitrust laws.

In the previous year the U.S. court of appeals in deciding *Radovich* has distinguished the Supreme Court's decisions in *Toolson* and *International Boxing* and found that professional football was a team sport and therefore would be exempt from the antitrust laws while boxing, an individual sport, was not comparable (231 F2d 620 (9th Cir., 1956)).

The Supreme Court stated that it was limiting the rule established in *Federal Baseball* and *Toolson* to organized baseball and that

> As long as the Congress continues to acquiesce we should adhere to—but not extend—the interpretation of the act made in those cases.

The Court, realizing that its decision might result in discriminations between sports that operated substantially the same as baseball, specifically stated that the solution to the problem rested with the Congress:

> If this ruling is unrealistic, inconsistent, or illogical, it is sufficient to answer, aside from the distinctions between the businesses, that were we considering the question of baseball for the first time upon a clean slate we would have no doubts. But *Federal Baseball* held the business of baseball outside the scope of the act. No other business claiming the coverage of those cases has such an adjudication. We, therefore, conclude that the orderly way to eliminate error or discrimination, if any there be, is by legislation and not by court decisions. Congressional processes are more accommodative, affording the whole industry hearings and an opportunity to assist in the formulation of new legislation. The resulting product is therefore more likely to protect the industry and the public alike. The whole scope of congressional action would be known long in advance and effective dates for the legislation could be set in the future without the injustices of retroactivity and surprise which might follow court action. Of course, the doctrine of *Toolson* and *Federal Baseball* must yield to any congressional action and continues only at its sufferance.

Thus, the Court firmly rejected the suggestion that it extend the baseball decisions to other sports. Instead, the Court made it clear that any exemption for the organized professional team sports of football, basketball, and hockey must come from the Congress.

The Congress

The Congress has shown awareness of the problems created by the various decisions of the Supreme Court affecting organized professional team sports and has given consideration to their antitrust aspects for 14 years. In that time approximately 60 bills have been introduced dealing with the status of professional team sports under the antitrust laws. Some of these bills sought to remedy the anomaly under which baseball was held to be outside the antitrust laws while other professional sports were declared within those laws.

Over a period of years differing views as to granting exemptions to permit contracts and agreements among the teams for the tele-

casting of their games hampered congressional agreement on proposed team sports legislation. In the face of a Federal court decision (*U.S. v. National Football League*, 196 Fed. Supp. 445 (E.D. Pa. 1961)), which prohibited the pooling of all National Football League games by the Columbia Broadcasting System, the Congress acted promptly to give legislative relief. (The issue is discussed in the summary devoted to the 87th Cong.) Passage of this measure removed the controversial television issue as an impediment to consideration of remedial legislation.

82d Congress

In 1951 the Subcommittee on Study of Monopoly Power of the House Committee on the Judiciary conducted an investigation to determine whether organized baseball should come within the antitrust laws. Three identical bills pending before the subcommittee provided a complete exemption from the antitrust laws for "organized professional sports enterprises." The subcommittee held 16 days of hearings, receiving testimony from 33 witnesses. None of these bills was reported from the subcommittee. At the time of the subcommittee hearings, several treble damage actions filed by players and others against organized baseball were pending in the courts. The bills were introduced by "friends of baseball" who—

> "feared that the continued existence of organized baseball as America's national pastime was in substantial danger by the threat of impending litigation" (H.R. Rept. 2002, 82d Cong., 2d sess., p. 1).

On the day that the House bills were introduced, Senator Johnson of Colorado introduced S. 1526, which was almost identical with the bills introduced in the House. It was referred to the Judiciary Committee, which assigned it to the Antitrust Subcommittee. S. 1526 was reported by the subcommittee without hearings. On July 1, 1952, the Judiciary Committee voted to postpone its consideration indefinitely.

83d Congress

In 1953 Senator Johnson of Colorado introduced S. 1396, a bill which would permit organized baseball to adopt rules regulating the broadcasting or telecasting of major league games into areas other than their home territories. The telecasting of major league baseball games into areas where minor league teams were located had so seriously affected the attendance at minor league games as to cause some teams and leagues to go out of business. In an effort to protect the minor league territories, organized baseball had adopted a rule, commonly known as rule 1(d), which prohibited the telecasting or broadcasting of major league games into minor league territories without the permission of the minor league team. The Department of Justice advised organized baseball that such a rule was contrary to the antitrust laws, With the threat of prosecution and litigation, rule 1(d) was rescinded.

S. 1396 was referred to the Committee on Interstate and Foreign Commerce. Five days of hearings were held before the Subcommittee on Televising Baseball Games at which representatives of the major and minor leagues testified. The bill was reported favorably with amendments by the Committee on Interstate and Foreign Commerce on June 10, 1953 (S. Rept. 387, 83d Cong., 1st sess.). On July 8,

1953, there was a brief discussion of the bill in the Senate (99 Congressional Record, p. 8191 et seq.). No further action was taken on this measure.

In 1954 Senator Johnson of Colorado introduced Senate Joint Resolution 133. The resolution would have made the antitrust laws applicable to any team in organized baseball which was controlled directly or indirectly, in whole or in part, by any individual or organization which was engaged in the sale or distribution of alcoholic beverages. The resolution was directed at the purchase of the St. Louis Cardinals by a national brewery (100 Congressional Record, p. 2116). The resolution was referred to the Senate Judiciary Committee. Hearings were held by the Antitrust Subcommittee at which witnesses representing the Government, organized baseball, and the brewing industry testified. The resolution was reported from the Antitrust Subcommittee on June 19, 1954. On August 2, 1954, the Judiciary Committee postponed its consideration indefinitely.

In February 1954 Representative Celler introduced H.R. 7949, which would make the antitrust laws applicable to all forms of trade or commerce unless specifically exempted by statute. Representative Celler was quoted in the press as having introduced the bill because the "Courts had given preferred treatment to baseball and some movie houses because of the confusion confounded over what constitutes a business." The bill was referred to the House Judiciary Committee, which did not act upon it.

84th Congress

No bills were introduced in the 84th Congress concerning the antitrust status of professional team sports.

85th Congress

In 1957, following the decision of the Supreme Court in *Radovich* v. *National Football League*, *supra*, the Congress again examined the relation of the antitrust laws to organized professional team sports. In its decision in *Radovich*, the Supreme Court held that professional football was subject to the antitrust laws notwithstanding the exemption that had been granted to baseball.

Following the *Radovich* decision, several bills seeking to clarify the antitrust status of professional team sports were introduced in the House. Among them were H.R. 5319, 5383, and 6876.

The bills, which were referred to the House Judiciary Committee, proposed three types of solutions to the problem: The first provided that baseball, like other team sports, should be subject to the antitrust laws and that the courts be permitted to determine upon the facts of each case, whether any particular agreement or practice constituted an unreasonable restraint of trade. The second provided for a complete antitrust exemption for the professional team sports as well as for acts in the conduct of such enterprises. The third provided that all professional team sports be placed under the antitrust laws and that certain practices be specifically exempted from those laws.

In the summer of 1957 approximately 50 witnesses testified in 15 days of hearings before the House Antitrust Subcommittee on these bills. No action resulted.

On January 30, 1958, Representative Celler introduced H.R. 10378. The bill declared that the professional team sports of baseball, football, basketball, and hockey come within the purview of the antitrust laws, but exempted from those laws such activities of team sports which were "reasonably necessary" to these ends:

(1) the equalization of competitive playing strengths;

(2) the right to operate within specified geographic areas; or

(3) the preservation of public confidence in the honesty in sports contests.

The bill was referred to the Judiciary Committee. No hearings were held.

H.R. 10378 was reported favorably by the House Judiciary Committee on May 13, 1958. On June 17, 1958, four identical bills were introduced in the House which were to be offered as substitutes for H.R. 10378 which was at that time on the House Calendar. On June 24, 1958, H.R. 10378, as amended, was passed by the House. These amendments eliminated the words "reasonably necessary" and enlarged the areas of exemption to include the following:

(1) the employment, selection, or eligibility of players, or the reservation, selection, or assignment of player contracts; and

(2) the regulation of rights to broadcast and telecast reports and pictures of sports contests.

On June 27, 1958, the late Senator Hennings, for himself and others, introduced S. 4070, which was identical with H.R. 10378, as passed by the House. The Senate Antitrust Subcommittee, to which both bills were referred, held 12 days of hearings in July 1958 at which 37 witnesses representing all team sports and other interests testified. On August 1, 1958, the subcommittee tabled both bills. No further action was taken on them in the 85th Congress.

86th Congress

In January 1959, Senator Hennings, for himself and other, introduced S. 616. The bill was similar to S. 4070 introduced in the previous Congress, differing only in its application to the telecasting and broadcasting provisions.

In February 1959 the late Senator Kefauver introduced S. 886 which with some limitations provided the exemptions proposed in S. 616. The limitations provided that the exemptions would not be effective if any major league baseball club controlled more than 80 players at any one time. Additionally, a player had to give his consent before he could be subjected to a league draft. This provision was designed primarily to protect the rights of college football players who had no opportunity to negotiate for their services, there being at that time only one major football league. The bill provided that baseball and football could completely regulate the right to operate within specific geographic areas, provided that such a geographic area could not exceed a radius of 35 miles from the baseball park or football field. This exemption did not apply to cities having a population of more than 2 million. Further, the exemption relating to the regulation of telecasting and broadcasting was to be based upon a finding by the Federal Communications Commission that any agreements or contracts by leagues be reasonably necessary. The bill was to be effective for a period of 4 years, to enable the Congress to reexamine the situation.

Hearings on S. 616 and S. 886 were held by the Antitrust Subcommittee in July 1959. Witnesses included representatives of football and baseball.

Shortly thereafter Senator Kefauver, for himself and others, introduced S. 2545. This bill excluded organized baseball. In his remarks on its introduction Senator Kefauver explained that the subcommittee had been unable to arrive at a bill which would cover all team sports. He said that baseball was fundamentally different from other team sports in that it had a minor league system through which it controlled almost all players within the sport. In addition, he said that the subcommittee wished to spend more time studying baseball and that S. 2545 would eliminate the existing discrimination among the team sports. S. 2545 was reported favorably with minor amendments by the Antitrust Subcommittee to the Judiciary Committee on September 2, 1959. On June 13, 1960, S. 616 and S. 886 were reported to the Judiciary Committee. On that day the Judiciary Committee indefinitely postponed consideration of S. 616, S. 886 and S. 2545.

In May 1960 Senator Kefauver introduced S. 3483. This bill contained two titles. Title I applied to football, basketball, and hockey and was similar to S. 886. Title II applied to baseball and this also was similar to S. 886. There was an additional section in title II prohibiting the existing major leagues of organized baseball from hindering the formation of additional major leagues. At the time of the introduction of S. 3483 there was considerable activity relating to the proposed formation of the Continental League.

Hearings were held on S. 3483 in May 1960 with testimony presented by organized baseball and representatives of the newly formed Continental League. The Judiciary Committee received S. 3483 from the Antitrust Subcommittee and reported it to the Senate with amendments and without recommendation on June 20, 1960. (S. Rept. 1620, 86th Cong.)

S. 3483 was called up in the Senate on June 28, 1960. The bill was amended by striking out title II, which applied solely to baseball and included baseball in title I. Thereafter, the bill was recommitted without instructions to the Senate Judiciary Committee. No further action was taken on any of the proposed bills during the 86th Congress.

In the House of Representatives during the Congress seven bills were introduced pertaining to the antitrust status of professional team sports. Six of the bills were identical, except for provisions relating to telecasting and broadcasting, to H.R. 10378, 85th Congress, as passed by the House. Another bill proposed a complete exemption from the antitrust laws for organized professional team sports. The bills were referred to the Judiciary Committee.

Hearings on these proposals were held by the House Antitrust Subcommittee in September 1959. Testimony was received from the commissioner of baseball, three Members of the House of Representatives, and four officials of television stations. No further action on any of the bills was taken by the House.

87th Congress

On January 5, 1961, Senator Kefauver introduced S. 186 which was similar to S. 3483 as introduced in the 86th Congress.

On May 11, 1961, Senator Hart, for himself and others, introduced S. 1856, which was similar to many of the bills introduced in prior

Congresses. No hearings were held on these bills. They were reported by the Antitrust Subcommittee to the Judiciary Committee without recommendation on September 12, 1961. The bills were discussed by the Judiciary Committee, but no further action was taken on them.

Early in this Congress three bills, similar to S. 1856, were introduced in the House of Representatives. The bills were referred to the Judiciary Committee where no action was taken on them.

On August 16, 1961, Senator Kefauver introduced S. 2427 which would permit the member clubs of a league in the organized professional team sports to pool their individual television rights for sale by the league as a package. The text of Senator Kefauver's bill was that of the television pooling section of S. 168 introduced by him earlier in the session.

On August 17, 1961, Representative Celler introduced H.R. 8757, which embodied the same provisions as S. 2427 except that there was no prohibition against the telecasting of professional football games at those times traditionally used for the playing of intercollegiate football games.

The necessity for the proposed legislation arose out of two decisions of the U.S. District Court for the Eastern District of Pennsylvania, which found that certain television practices of the National Football League violated the antitrust laws. The first decision entered in 1953 struck down an attempt by the NFL to limit the telecasting of games into the home areas of other league member teams. In 1961, the court which had retained jurisdiction ruled invalid a contract between the NFL and the Columbia Broadcasting System for the telecasting of all league games *United States* v. *National Football League* (116 F. Supp. 319 (1953); 196 F. Supp. 445 (1961)).

Hearings on H.R. 8757 were held by the House Antitrust Subcommittee on August 28, 1961. On September 7, 1961, Representative Celler introduced H.R. 9096 which was similar to H.R. 8757, but included a prohibition relating to the telecasting of professional football games at times traditionally used for the playing of intercollegiate football games. H.R. 9096 was passed by the House on September 18, 1961, and was adopted without change by the Senate on September 21, 1961. It became law on September 30, 1961 (Public Law 87–331).

88th Congress

On December 16, 1963, Senator Hart, for himself and others, introduced S. 2391 which was similar to S. 1856, 87th Congress, except for the provision in the prior bill relating to telecasting. Hearings were held by the Antitrust Subcommittee in January and February 1964, at which testimony was received from representatives of all organized professional team sports. On July 20, 1964, the bill was reported to the Judiciary Committee. The Judiciary Committee reported S. 2391 favorably and without amendment to the Senate on August 4, 1964 (S. Rept. 1303, 88th Cong.). No action was taken by the Senate on the proposal in the 88th Congress.

Fourteen bills identical to S. 2391 were introduced in the House of Representatives. All of the bills were referred to the House Judiciary Committee. No hearings were held and no action was taken on any of the proposals in the House.

STATEMENT

This legislation, then, is in response to the judicial decisions which have placed the responsibility for reconciling the conflicting cases directly in the hands of Congress. It reflects the hearings and discussions which have occupied congressional committees for the past 14 years.

During this period, two desirable objectives have crystallized: First, baseball should be subject to the antitrust laws; there is no basis either in theory or in fact why baseball should hold a preferred position in relation to other organized professional team sports. Second, there are specific and traditional areas of their essential sports aspects which should be exempt from the antitrust laws if these team sports are to operate in the best interests of the general public.

An insistence that professional team sports meet the same competitive standards as other business would, in fact, mean the end of professional team sports as they are known today. This is for two reasons.

First, traditional competitive concepts assume that the public will be best served by vigorous competition between companies so that those who are able to give the public the best product at the best price will be those that prosper. However, in the field of professional team sports, the public is best served when the teams within a league are evenly balanced. If one becomes more efficient than the rest, the sport suffers. Without the exemptions provided in this bill, it is generally agreed that the wealthier teams would absorb the best talent and force the dissolution of the poorer teams and of the leagues themselves.

Therefore, there is a special situation affecting the public interest involving team sports which does not apply to the traditional competitive situation.

Second, the usual business acts independently of his competitor. Indeed, the antitrust laws insist he must. However, professional team sports must, of necessity, be organized into leagues. And as members of these leagues the teams must be able to act in concert in certain sports areas, if the league concept is to have any meaning. There are also occasions when the leagues must be permitted to work together. This bill recognizes the league concept and its benefits to the public.

Where industries have been granted an exemption from the antitrust laws, they usually have been placed under the supervision of a Federal regulatory agency or commission. The committee is of the opinion, however, that the exemptions granted the designated professional team sports, being limited in character, do not require such regulation.

Further need for the bill was demonstrated when hearings on the proposed legislation were held by the Antitrust Subcommittee in February 1965. They were limited to the antitrust aspects of the recent acquisition of the New York Yankees by the Columbia Broadcasting System.

CBS announced in August 1964, that it had concluded negotiations to buy control of the New York Yankees. This was the first time in the history of oragnized baseball that a major league team was to be owned by a great communications network.

The CBS acquisition of the Yankees brings into sharp focus the need of the present bill. Organized baseball relies increasingly on television for financial stability and the position CBS has gained by its acquisition raises serious competitive questions that require the availability of antitrust weapons to protect the public interest. At the hearings, the president of CBS testified that he also thought the antitrust laws should be applicable to the business aspects of team sports.

Certainly, any doubt as to the applicability of the antitrust laws to this kind of transaction because of baseball's exemption would be removed by passage of this legislation.

The exemptions

The first two exemptions provide for the "equalization of competitive playing strengths" and "the employment, selection, or eligibility of players, or the reservation, selection, or assignment of player contracts." These exemptions permit the use of the draft system and the "reserve clause" in addition to regulations restricting the employment, selection and assignment of player contracts. The committee considers these exemptions as necessary to maintain competitive equality among the member clubs and leagues in the various sports. Player representatives themselves have testified that the above practices are necessary and do not impinge upon their rights.

The third exemption permits the leagues to restrict geographic areas in which their member teams operate. This exemption is necessary to provide financial stability through preservation of the "live gate" and to give each of the leagues geographic balance.

Concern has been expressed regarding moving baseball franchises from one city to another in order to increase revenues. Baseball franchise owners have an obligation to the public to remain with their franchised territories, absent compelling reasons to transfer. Naturally, there is a desire of many cities to secure a team; however, it seems that the public interest would be best served by expansion of the existing major leagues or the formation of another major league rather that the movement of existing franchises.

The committee has considered a proposal by Senator Proxmire requiring all major league baseball teams to pool television and radio revenues and divide them equally among all teams. The primary purpose is to discourage moving a major league baseball franchise to a more lucrative television market area. The committee views the amendment as unfair to teams which have established a large following in their franchise areas enabling them to obtain better television and radio contracts. The variation in revenues received by major league baseball teams for local telecasts and broadcasts is too great for the proposal to be equitable. There is a trend for pooling television and broadcasting revenues and that practice should not be discouraged as it tends to equalize further the strength of the various teams.

The present system within organized baseball which requires a vote of the league or leagues before moving a franchise is a means of insuring geographic balance among the teams. But further it has the potential to prevent franchise moves made without a compelling reason. If present antitrust laws were applied with full vigor there would be no means of preventing any team from moving anywhere at any time.

Therefore, this exemption should have the result of braking rather than accelerating franchise moves.

The fourth exemption relates to the preservation of public confidence in the honesty in sports contests. This exemption contemplates the continued use of the device now employed under which a league official is empowered to make decisions binding on the clubs in areas affecting public confidence. The committee believes it necessary that the designated sports continue to be free from any suggestion of dishonesty and it regards this exemption from the antitrust statutes to be in the public interest. Provisions for discipline of players and clubs by fines, suspensions, and other penalties by a league or club official, while foreign to the commercial world, are essential for maintenance of public confidence in sports and therefore are appropriate under this provision.

Under an amendment adopted by the committee the exemptions provided in the legislation would not be available to an organization of clubs within a professional team sport where a member club is permitted to exercise exclusive or preferred rights and to negotiate and contract for the services of a college student within a designated period. The prohibited period extends from the time of the college student's matriculation at a 4-year college to the conclusion of the fourth academic year thereafter, or the end of the scheduled intercollegiate season of the sport which the student has contracted to play with the member team, the period being cut off by his being graduated or the season's ending, according to which occurs first.

TELEVISION

The committee adopted an amendment amending Public Law 87–331, which granted professional team sports an exemption from the antitrust laws to permit them to pool their separate television rights. The amendment prohibits professional football teams from telecasting their games into areas where high school games are played in the times set aside for intercollegiate football games in Public Law 87–331.

The committee is of the opinion that this amendment is necessary to obviate the great disadvantage that could result to high school football programs and to other high school athletic programs for which football provides financial support if there is competition from televised professional football games.

The committee is aware that the amendment does not cover those instances where member teams of a professional football league contract independently of the league for the telecasting of their games. The committee views the practice of telecasting professional football games at those times traditionally used for the playing of high school and college football games as a threat to the scholastic athletic programs.

The committee intends to follow closely all developments in the organized professional team sports, including those areas where proposals have been suggested. If abuses do occur it will then recommend that remedial action be taken. Certainly the exemptions granted to the team sports involved constitute an obligation on them to act in the public interest.

CONCLUSION

The committee believes that the existing system of self-regulation in these team sports should be continued. It feels further that the public interest is best served by keeping the business aspects of the team sports involved within the antitrust laws while the essential sports activities are exempted.

The history of this legislation demonstrates that these conclusions have been reached only after thorough study, consideration, and deliberation of this subject by the Antitrust Subcommittees and the Judiciary Committees of the House and Senate and by both Houses of Congress itself. Therefore, it appears to this committee that now is the time to make this legislation the law of the land.

Accordingly, the committee recommends favorable consideration of S. 950, with amendments.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

That (a) except as otherwise provided by subsection (b), the Act of July 2, 1890, as amended (26 Stat. 209); the Act of October 15, 1914, as amended (38 Stat. 730); and the Federal Trade Commission Act, as amended (38 Stat. 717), shall be applicable according to their terms to the organized professional team sports of baseball, football, basketball, and hockey, except that neither such Act shall apply to any contract, agreement, rule, course of conduct, or other activity by, between, or among persons conducting, engaging, or participating in any one of the organized professional team sports of baseball, football, basketball, or hockey to the extent to which such contract, agreement, rule, course of conduct, or activity relates to—

(1) the equalization of competitive playing strengths;

(2) the employment, selection, or eligibility of players, or the reservation, selection, or assignment of player contracts;

(3) the right to operate within specific geographic areas; or

(4) the preservation of public confidence in the honesty in sports contests.

(b) The exemption conferred by subsection (a) shall not apply to any agreement, plan or arrangement under which any club administering a professional sport team may have an exclusive or preferred right to negotiate for the services of any college student if such agreement, plan, or arrangement would permit such club to enter into a professional athletic contract with any student who has matriculated, at a four-year college granting degrees, before the earlier of the following dates: (1) the date of the conclusion of the fourth academic year following his matriculation, or (2) the date of the conclusion, during the fourth academic year following his matriculation, at the college at which he first matriculated, of the scheduled intercollegiate season of the professional sport to which he has been signed.

SEC. 2. As used in this Act, "persons" means any individual, partnership, corporation, or unincorporated association or any combination or association thereof.

SEC. 3. Nothing in this Act shall affect any cause of action commenced prior to the effective date hereof in respect to the organized professional team sports of baseball, football, basketball, or hockey.

SEC. 4. Nothing in this Act shall be construed to deprive any players in the organized professional team sports of baseball, football, basketball, or hockey of any right to bargain collectively, or to engage in other associated activities for their mutual aid or protection.

SEC. 5. Except as provided in section 1 of this Act, nothing contained in this Act shall be deemed to change, determine, or otherwise affect the applicability or nonapplicability of the antitrust laws to the organized professional team sports of baseball, football, basketball, or hockey.

SEC. 6. Section 3 of the Act of September 30, 1961 (75 Stat. 732) is amended to read as follows:

SEC. 3. Section 1 of this Act shall not apply to any joint agreement described in section 1 of this Act which permits the telecasting of all or a substantial part of any professional football game on any Friday after six o'clock post meridian or on any Saturday during the period beginning on the second Friday in September and ending on the second Saturday in December in any year from any telecasting station located within seventy-five miles of the game site of any intercollegiate *or interscholastic* football contest scheduled to be played on such a date if—

(1) such intercollegiate football contest is between institutions of higher learning both of which confer degrees upon students following completion of sufficient credit hours to equal a four-year course, [and] *or*

(2) In the case of an interscholastic football contest, such contest is between secondary schools both of which are accredited or certified under the laws of the State or States in which they are situated and offer courses continuing through the twelfth grade of the standard school curriculum, or the equivalent, and

(3) such intercollegiate *or interscholastic* football contest and such game site were announced through publication in a daily newspaper of general circulation prior to March 1 of such year as being regularly scheduled for such day and place.

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